UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.

HARGROVE ELECTRIC CO., INC.	
Respondent	**Case 16-CA-027812**
ALMAN CONSTRUCTION SERVICES, LP	
Respondent	**Case 16-CA-027813**
BOGGS ELECTRIC CO., INC.	
Respondent	**Case 16-CA-027814**

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 20

Charging Party

ANSWERING BRIEF ON BEHALF OF RESPONDENT HARGROVE ELECTRIC CO., INC., RESPONDENT ALMAN CONSTRUCTION SERVICES, LP AND RESPONDENT BOGGS ELECTRIC CO., INC. TO CHARGING PARTY IBEW LOCAL 20'S EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

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TABLE OF CONTENTS

Page

INTRODUCTION 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

- Background 3
- February 6, 2008 Notifications to Union 3
- Union Certifications 4
- 2010 Developments 4
- Pre-2011 Dues Deduction Authorizations 6
- 2011 Union Dues Deduction Authorization 7
- Contract Provisions 7

THE ALJ'S DECISION 8

THE UNION'S EXCEPTIONS 9

ARGUMENT 9

A. Respondents' Unilateral Cessation of Dues Deduction Upon Termination of the Collective Bargaining Agreement Did Not Violate Section 8(a)(5) 9

B. The NLRB Should Not Apply Retroactively Any Rule Abandoning *Bethlehem Steel* 13

CONCLUSION 15

TABLE OF AUTHORITIES

Page(s)

Adams v. City of Chicago,
469 F.3d 609 (7th Cir. 2006) 13

Bebley Enters.,
356 NLRB No. 64 (2010) 13

Bethlehem Steel Co.,
136 NLRB 1500 (1962) 8, 9, 10, 11, 12, 13, 14

Communications Workers of America, Local 110 (New York Telephone Company),
281 NLRB 413 (1986) 13

Electrical Workers Local 601 (Westinghouse Electric Corp.),
180 NLRB 1062 (1970) 12

Epilepsy Found. Of Northeast Ohio v. NLRB,
268 F.3d 1095 (D.C. Cir. 2001) 14

Hacienda Resort Hotel & Casino (Hacienda III),
355 NLRB No. 154 (2010) 8, 9, 10

Levitz Furniture Company of the Pacific, Inc.,
333 NLRB 717 (2001) 13

Litton Financial Printing Division v. NLRB,
501 U.S. 190 (1991) 10

Local Joint Executive Board Of Las Vegas v. NLRB,
657 F.3d 865 (9th Cir. 2011) 9, 10, 11

Local 74, SEIU (Parkside Lodge of Ct., Inc.),
322 NLRB 289 12

McClatchy Newspapers, Inv. v. NLRB,
131 F.3d 1030 (D.C. Cir. 1997) 10

Ogle Protection Services, Inc.,
183 NLRB 682 (1970) 13

SNE Enters., Inc.,
344 NLRB 673 (2005) 14

TABLE OF AUTHORITIES (Continued)

Page(s)

Swinton v. Potomac Corp.,
270 F.3d 794 (9th Cir. 2001) 13

U.S. Can Co. v. NLRB,
984 F.2d 864 (7th Cir. 1993) 10

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INTRODUCTION

Respondent Alman Construction Services, LP, Respondent Boggs Electric Co., Inc., and Respondent Hargrove Electric Co., Inc. ("Respondents") were Section 8(f) employers who had signed "me-too" agreements to follow the terms of a multi-employer union-employer association contract. In February 2008, they gave timely notice of their revocation of the employer association's bargaining authority. They also gave the union notice of the terms they would put into effect when the contract terminated in 2010.

Respondents lawfully exercised their rights as 8(f) employers to announce the institution of new terms to take effect after the 8(f) agreement terminated. One of the implemented changes made by each of the Respondents after the contract terminated was to discontinue union dues deductions. Under well-established Board law, an employer may lawfully discontinue dues deduction after contract expiration. Moreover, the dues deduction authorizations were not valid. Therefore, each Respondent did not unlawfully cease dues deduction for employees who had executed dues checkoff authorization forms. (G.C. 1(g)). Accordingly, the Administrative Law Judge found Respondents did not violate Section 8(a)(5) when they discontinued dues deduction on or about December 11, 2010.

Pursuant to Rule 102.46 of the Board's Rules and Regulations, Respondent Hargrove Electric Co., Inc., Respondent Alman Construction Services, LP and Respondent Boggs Electric Co., Inc., submit this Answering Brief to Charging Party IBEW Local 20's Exceptions to the Decision of the Administrative Law Judge.

STATEMENT OF THE CASE

International Brotherhood of Electrical Workers, Local Union 20 (the Union) filed the Charge against Respondent Hargrove Electric Co., Inc. (Respondent Hargrove) in Case No. 16-CA-027812 on December 22, 2010.[1] (GC Ex. 1(a)).[2] The Charge against Respondent Alman Construction Services, LP (Respondent Alman) in Case No. 16-CA-027813 and the Charge against Respondent Boggs Electric Co., Inc. (Respondent Boggs) in Case 16-CA-027814 were also filed by the Union on that date. (GC Ex. 1(b), (c)).

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1 All dates refer to 2010 unless otherwise specified.

2 References to the transcript of the hearing will be made as (Tr. ___); references to General Counsel's exhibits as (GC Ex. ___); to Respondents' exhibits as (ER Ex. ___); to the Decision of the Administrative Law Judge as (ALJD, ____); and to the Union Exceptions as (Exception _____).

On June 30, 2011, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing was issued in these cases. (GC Ex. 1(g)). A hearing took place before Administrative Law Judge Margaret G. Brakebusch (the ALJ) in Fort Worth, Texas, on October 11, 2011. On January 13, 2012, the ALJ issued a Decision finding, *inter alia,* each of the Respondents' unilateral cessation of dues checkoff did not violate Section 8(a)(5).

STATEMENT OF FACTS

Background

Respondents are construction employers. They have enjoyed longstanding Section 8(f) bargaining relationships with the Union. (Tr. 45).

That 8(f) relationship was in effect when, in January 2008, Respondents individually signed Letters of Assent-B with the Union. (GC Exs. 15-17). Each Respondent agreed to comply with the provisions of the December 1, 2007 – November 30, 2010 Inside Agreement between the Union and the Dallas/Fort Worth Division North Texas Chapter, NECA. (GC Ex. 18). The Letters of Assent remained in effect until terminated. They provided that if each Respondent did not intend to comply with all of the provisions of any subsequent agreements between North Texas Chapter, NECA and the Union, they had to notify the Union in writing at least 100 days before the end of the agreement. (GC Exs. 15-17).

February 6, 2008 Notifications to Union

On February 6, 2008, Respondents individually sent letters to the Union regarding the Inside Agreement which was to expire on November 30, 2010, and with proper notice would have no further force and effect after December 11, 2010. (GC Exs. 19-21).

Each Respondent advised the Union they would abide by the Section 8(f) agreement for its term, but did not intend to be bound by any subsequent approved agreements or addenda

between the Union and North Texas Chapter, NECA. Rather, each Respondent stated they would institute new terms and conditions of employment for its electrical employees effective December 11, 2010.

The Respondents added that their decisions on all other matters would be made at their sole discretion, and they would "not honor any terms from the expired Section 8(f) contract." (GC Exs. 19-21) (emphasis in original).

Union Certifications

On October 6, 2008, the Union was certified as the Section 9(a) representative of Respondent Boggs' electrical employees. (GC Ex. 23). On April 3, 2009, the Union was certified as the Section 9(a) representative of Respondent Hargrove's electrical employees. (GC Ex. 22). On October 30, 2009, the Union was certified as the Section 9(a) representative of Respondent Alman's electrical employees. (GC Ex. 24). Subsequent to its certifications, the Union did not request to bargain over the changes announced by Respondents in February 2008, to take effect in December 2010.

2010 Developments

On August 9, 2010, Respondent Alman and Respondent Boggs sent notice to the Union. It stated:

> As you are aware [Respondent] served notice during February 2008 revoking its Letter of Assent B and implementing new terms and conditions of employment to be effective at the end of the present Local No. 20 contract to which [Respondent] is bound through that Revoked Letter of Assent.
>
> This letter also serves as notice under Section 1.02(a) to terminate the present contract between Local No. 20 and [Respondent].

(GC Exs. 25, 39). An identical letter was sent by Respondent Hargrove on August 13, 2010. (GC Ex. 26).

On August 16, 2010, the Union sent Respondents individual letters seeking to open negotiations for a new contract with each employer. The Union also gave notice, pursuant to the terms of Inside Agreement, of termination of that agreement effective November 30, 2010. (GC Exs. 27-29).

On November 30, 2010, each Respondent sent the Union a 10-day notice of termination of the Inside Agreement. They told the Union the agreement "will have no further force and effect after December 10, 2010." (GC Exs. 33, 35, 37).

On or about December 11, 2010, Respondent Alman terminated the Inside Agreement and changed employees' terms and conditions of employment. More specifically, Respondent Alman ceased dues deduction for employees. (Tr. 36). At the time Respondent Alman made those changes, it was not at impasse with the Union in contract negotiations. (Tr. 36).[3]

Also on or about December 11, 2010, Respondent Boggs terminated the Inside Agreement and changed employees' terms and conditions of employment. More specifically, Respondent Boggs ceased dues deduction. (Tr. 36-37). At the time Respondent Boggs made those changes, it was not at impasse with the Union in contract negotiations. (Tr. 36-37).[4]

Further, on or about December 11, 2010, Respondent Hargrove terminated the Inside Agreement and changed employees' terms and conditions of employment. More specifically, Respondent Hargrove ceased dues deduction. (Tr. 35-36). At the time Respondent Hargrove made those changes, it was not at impasse with the Union in contract negotiations. (Tr. 35-36).[5]

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[3] On December 15, 2010, the Union stated its opposition to Respondent Alman's changes but did not request to bargain over the implemented changes. (GC Ex. 38).

[4] On December 17, 2010, the Union stated its opposition to Respondent Boggs' changes but did not request to bargain over the implemented changes. (GC Ex. 36).

[5] On December 15, 2010, the Union stated its opposition to Respondent Hargrove's changes but did not request to bargain over the implemented changes. (GC Ex. 34).

Pre-2011 Dues Deduction Authorizations

For years, the Union had used several means by which employees authorized Working Dues being deducted by their employer from their pay and forwarded to the Union. The various versions of the form were included on the referral slip provided by the Union's hiring hall. Every time an employee was referred to an employer from the Union hiring hall, they received an authorization form. (Tr. 79-80, 85). The three forms used for journeymen were:

DUES AND VACATION DEDUCTION AUTHORIZATION

> I, ___[Employee]___ hereby authorize my Employer, who is signatory to a Collective Bargaining Agreement with IBEW, Local Union 20, to deduct from my pay each week the amount of Working Dues (specified in the Local Union By-Laws) the amount of Vacation (specified in the Agreement) and the employer's cost of pre-hire drug test if I fail. The Working Dues will be forwarded to Local 20 monthly. The Vacation will be forwarded to the respective Credit Union monthly. I reserve the right to discontinue such deduction by notifying the Employer and the Union in writing 60 days prior to June 30th of any year.

(ER Ex. 5; Tr. 88-89).

DUES AND VACATION DEDUCTION AUTHORIZATION

> I, ___[Employee]___ hereby authorize my Employer, who is signatory to a Collective Bargaining Agreement with IBEW, Local Union 20, to deduct from my pay each week the amount of Working Dues (specified in the Local Union By-Laws) and the amount of vacation (specified in the Agreement). The Working Dues will be forwarded to Local 20 monthly. The Vacation will be forwarded to Local Union 20 monthly. The vacation will be forwarded to the respective Credit Union monthly.

(ER Ex. 7; Tr. 90).

DUES AND VACATION DEDUCTION AUTHORIZATION/CODE OF EXCELLENCE

> I, ___[Employee]___ hereby authorize my Employer, who is signatory to a Collective Bargaining Agreement with IBEW, Local Union 20, to deduct from my pay each week the amount of Working Dues (specified in the Local Union By-Laws) the amount of Vacation (specified in the Agreement) and the employer's cost of pre-hire drug test if I fail. The Working Dues will be forwarded to Local 20 monthly. The Vacation will be forwarded to the respective

Credit Union monthly. I reserve the right to discontinue such deduction by notifying the Employer and the Union in writing 60 days prior to June 30th of any year. By signing this referral, I also acknowledge the Seventh District Code of Excellence and my obligation to comply therewith.

(ER Ex. 6; Tr. 89).[6]

An additional form was used for apprentices:

DEDUCTION AUTHORIZATION

I hereby authorize my Employer, who is signatory to a Collective Bargaining Agreement with IBEW Local 20, to deduct from my pay each week the amount of Working Dues (specified in the Local Union By-Laws) the amount of Vacation (specified in the Agreement) and the employer's pre-hire if I fail. The Working Dues will be forwarded to Local 20 monthly. The Vacation will be forwarded to the respective Credit Union monthly. By signing this referral, I also acknowledge the Seventh District Code of Excellence and my obligation to comply therewith.

(ER Ex. 4; Tr. 87).[7]

2011 Union Dues Deduction Authorization

In 2011, the Union changed the form for journeymen. It omitted reference to vacation deductions even though the form is still titled "DUES AND VACATION DEDUCTION AUTHORIZATION/CODE OF EXCELLENCE." (ER Ex. 8; Tr. 93, 95). It also omitted reference to the pre-hire drug test.

Contract Provisions

Section 6.13 of the Inside Agreement provided:

Section 6.13. Union Dues Deduction

The Employer agrees to deduct and forward to the financial Secretary of the Local Union, upon receipt of a voluntary written authorization, the additional working dues from the pay of each IBEW member. The amount to be deducted shall be the amount specified in the approved Local Union Bylaws. Such amount shall be certified to the Employer by the Local Union upon request by the Employer.

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6 These forms were used for all employees of Respondents. (Tr. 87-89).

7 This form was used for employees of Respondents. (Tr. 87).

Vacations were established under Section 6.15 of the Inside Agreement:

Section 6.15. Vacation

(A) Each Employee working under the terms of this Agreement shall sign a card authorizing the Employer to withhold as a vacation allowance, an amount equal to five percent (5%) of gross pay, which amount is included in the wage rates listed in the Labor Agreement. The employee shall have the option to opt out of the vacation deduction or to increase the amount withheld, upon completion of the proper authorization forms. The amended vacation withholding percentage shall remain in effect for a period of no less than 12 months.

(B) The vacation allowance shall be withheld. An authorization card for each Employee working under the terms of this agreement shall be on file at the office of IBEW Local 20. The vacation allowance shall be withheld from the employee's weekly pay and shall be sent on a transmittal to the Administrative Maintenance Fund to be remitted to the vacation fund account in a timely manner. All vacation funds will be forwarded to the Local 20 IBEW Federal Credit Union for dispersal.

THE ALJ'S DECISION

The ALJ found Respondents' discontinuation of dues checkoff after termination of the CBA did not violate Section 8(a)(5). (ALJD, 13).

In the face of longstanding Board precedent holding an employer may lawfully discontinue dues checkoff after contract expiration, *see Hacienda Resort Hotel & Casino (Hacienda III),* 355 NLRB No. 154 (2010); *Bethlehem Steel,* 136 NLRB 1500 (1962), counsel for the Acting General Counsel urged the ALJ to find Respondents' actions violated Section 8(a)(5). The ALJ correctly found *Hacienda III* remains outstanding Board law with respect to the lawfulness of an employer's cessation of dues deduction after the expiration of a contract. Accordingly, she fulfilled her responsibility to apply established Board precedent and found Respondent's actions did not violate Section 8(a)(5). (ALJD, 12-13).

THE UNION'S EXCEPTIONS

The Union excepts to the ALJ's conclusion that Respondents' discontinuation of dues checkoff did not violate Section 8(a)(5). (Exception 1). It urges the Board to reject almost 50 years of precedent embodied by *Bethlehem Steel, supra,* and *Hacienda III, supra,* and to apply the decision in *Local Joint Executive Board of Las Vegas v. NLRB,* 657 F.3d 865 (9th Cir. 2011) as controlling legal authority on the basis that the Ninth Circuit's decision constitutes better reasoned legal authority. (Exceptions 2, 3).[8]

ARGUMENT

A. Respondents' Unilateral Cessation of Dues Deduction Upon Termination of the Collective Bargaining Agreement Did Not Violate Section 8(a)(5).

Respondents maintained contractually-authorized deduction of Union dues until the contracts terminated on December 11, 2010. At that point, with no contract in effect, Respondents discontinued dues deduction.

The Union first argues the discontinuation of dues deductions were not encompassed in Respondents' February 2008 letters. Accordingly, it contends, the discontinuation of dues deduction could not be implemented upon the contracts' termination.

This argument has two fatal failings. First, it ignores that Respondents' February 2008 letters stated they would not honor any terms from the expired Section 8(f) agreements. That all-encompassing statement encompassed dues deduction. Therefore, the discontinuation of dues deduction was a change announced in February 2008.

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[8] The Acting General Counsel did not file exceptions to the ALJ's Decision.

Even if the February 2008 letters did not encompass the prospective discontinuation of dues checkoff upon termination of the contracts, Respondents' actions were nonetheless privileged under Board law.

Respondents' actions were permitted under *Bethlehem Steel Co.,* 136 NLRB 1500 (1962) and its progeny. The Board's most recent decision addressing the subject, on second remand from the Ninth Circuit, effectively reaffirmed that precedent in the absence of a three-member majority to overrule it. *See Hacienda Resort Hotel & Casino (Hacienda III),* 355 NLRB No. 154 (2010). There is no reason to now overrule 50 years of Board precedent.

The Union argues that *Bethlehem Steel* and its progeny should be abandoned and that the Board should adopt the views of the Ninth Circuit in *Local Joint Exec. Bd. of Las Vegas, supra,* at least as they regard employers in a right-to-work state such as Texas. It raises arguments abandoned by the Acting General Counsel to the effect that a dues deduction is an independent wage assignment distinct from union security and therefore should come within the "unilateral change" doctrine.

Bethlehem Steel, relied upon by the ALJ, was rightly decided. It has been cited with approval by the United States Supreme Court. *See Litton Financial Printing Division v. NLRB,* 501 U.S. 190, 199 (1991) ("it is the Board's view that union security and dues check-off are excluded from the unilateral change doctrine because of statutory provisions which permit these obligations only when specified by the express terms of a collective-bargaining agreement."). Other Courts of Appeals have reached a similar conclusion. *See McClatchy Newspapers, Inc. v. NLRB,* 131 F.3d 1030 (D.C. Cir. 1997); *U.S. Can Co. v. NLRB,* 984 F.2d 864 (7th Cir. 1993).

The Union argues that Section 302(c)(4) of the LMRA mandates that *Bethlehem Steel* be overruled. Its reliance on Section 302(c)(4) is misplaced. There are two requirements that must

be met before an employer may lawfully check off union dues on behalf of their employees. First, the employer and the union must agree to include a dues checkoff provision in their contract. Then, an employer may only check off dues if an employer signs a valid dues checkoff authorization that meets the requirements of Section 302(c)(4).

Bethlehem Steel did not rely upon Section 302(c)(4), nor has the Board relied upon that Section in applying *Bethlehem Steel* for almost 50 years. It is immaterial that Section 302(c)(4) does not provide for automatic expiration of dues checkoff upon contract expiration. Section 8(a)(3) governs an employer's responsibilities in that regard. *Bethlehem Steel, supra,* 136 NLRB at 1502. By adopting the position that contract expiration terminates an employer's obligation to deduct dues absent agreement of the parties, the Board still allows an employee to exercise their individual rights under Section 302(c)(4) to revoke their authorization to dues checkoff.

Simply put, *Bethlehem Steel* has been understandable and workable for almost 50 years. It is not contrary to statutory principles, disruptive to industrial stability, or confusing. Therefore, *Local Joint Exec. Bd. of Las Vegas, supra* should not be adopted as Board law. Even if the Board were to consider retreating from *Bethlehem* Steel and adopting the reasoning of the Ninth Circuit in *Local Joint Exec. Bd.,* these cases are not a proper vehicle for such adoption. The Ninth Circuit's opinion is not applicable herein because *Local Joint Exec. Bd.* did not involve a pre-hire agreement. Unlike the contracts in *Local Joint Exec. Bd.,* the contracts herein were prehire agreements negotiated by a minority union without any employee showing at the time the contracts were executed that they were in favor of the Union. Dues were checked off on behalf of the Union before it attained majority representative status. *Local Joint Exec. Bd.,* on the other hand, involved dues deductions authorized only after the union became the 9(a) representative. Even if dues deductions authorized by employees on behalf of a current Section

9(a) representative should be honored after contract expiration, dues deduction authorizations executed on behalf of a minority Section 8(f) union should not, under any circumstances, be entitled to post-contract termination enforcement.

In any event, even if the Board decides to overrule *Bethlehem Steel* and its progeny, there is an additional reason why the ALJ's conclusion that Respondents' discontinuation of dues checkoff did not violate Section 8(a)(5) is correct. General Counsel pled that Respondents ceased honoring valid dues deduction authorizations (G.C. Ex. 1(g)) (emphasis added). The authorizations Respondents ceased honoring were not valid.

To be lawful, dues authorizations must be voluntary. *Local 74, SEIU (Parkside Lodge of Ct., Inc.),* 322 NLRB 289, 293; *Electrical Workers Local 601 (Westinghouse Electric Corp.),* 180 NLRB 1062 (1970). None of the forms utilized for dues deduction authorization by the Union as of December 2010 were voluntary.

Section 6.15 of the Inside Agreement requires all employees to sign a card authorizing their employer to withhold five percent of their gross pay as a vacation allowance. Only after the employee signs the form may they opt out of the vacation program. (GC Ex. 18).

All five of the dues deduction authorization forms in effect as of December 2010 combined mandatory vacation deduction authorization with dues deduction authorization. (ER Exs. 3-7).[9] Vacation dues deduction authorization was mandatory for all employees. The only way it could be accomplished was by the employee also agreeing to dues deduction authorization. Thus, employees were required to agree to dues deduction authorization as well as vacation deduction authorization. Therefore, their dues deduction authorizations were not

[9] ER Ex. 5 actually combined three authorizations: dues, vacation, and drug test cost reimbursement. ER Ex. 6 combined those three and the employee's acknowledgement of his obligation to comply with the Seventh District Code of Excellence. ER Ex. 4 combined vacation deduction, dues deduction and adherence to the Code of Excellence.

voluntary. Involuntary dues deduction authorizations are not valid. *See Communications Workers of America, Local 110 (New York Telephone Company),* 281 NLRB 413 (1986). Accordingly, General Counsel cannot establish that Respondents discontinued honoring valid dues deduction authorizations.[10] Therefore, the allegations regarding Respondents' deduction of such authorizations must be dismissed.

B. The NLRB Should Not Apply Retroactively Any Rule Abandoning *Bethlehem Steel.*

The Union argues that *Bethlehem Steel* should be overruled retroactively and that Respondents should be ordered to reimburse the Union for dues deduction payments it failed to make.[11] If *Bethlehem Steel* is overruled, a reversal of this magnitude should not be applied retroactively.

In *Levitz Furniture Company of the Pacific, Inc.,* 333 NLRB 717 (2001), the Board reversed longstanding precedent regarding unilateral withdrawal of recognition. It declined to implement *Levitz* retroactively because employers did not have adequate warning of the change in position. *Id.* at 729. Similarly, if the Board reverses *Bethlehem Steel,* it will be declaring unlawful conduct long held to be lawful. Respondents are entitled to adequate prior warning of

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[10] The Union changed its dues deduction authorization in 2011 and the 2011 form no longer includes reference to the mandatory vacation deduction. No explanation was offered on the record for the 2011 change. The 2011 dues deduction authorization card was admissible to impeach the Union's testimony that its pre-2011 cards were valid. *See, e.g., Adams v. City of Chicago,* 469 F.3d 609 (7th Cir. 2006) (while Rule 407 concerns safety measures it does not apply to disparate impact claims where a subsequently enacted method bears on the availability of an alternative method on an earlier date); *Swinton v. Potomac Corp.,* 270 F.3d 794 (9th Cir. 2001) (in employment discrimination context, post-occurrence remediation is part and parcel of the legal framework). Here, the 2011 card shows that, prior to 2011, the Union could have utilized a dues deduction authorization not tying voluntary dues deduction to mandatory vacation deduction but failed to do so.

[11] The Union further argues that no deductions should be taken from employees' current or future wages to satisfy the reimbursement order. The Union cites no Board authority for that argument. Moreover, that argument runs counter to Section 302. Under Section 302, an employer may not make payments to a union without specific authorization from employees. The only authorizations in the record for the period prior to December 10, 2010, the defective dues authorizations, only authorize Respondents to make payments to the Union after deducting that amount of money from the employees' wages. *See Bebley Enters.,* 356 NLRB No. 64 (2010) (retroactive dues deduction ordered – employer not ordered to pay dues out of its own pocket); *Ogle Protection Services, Inc.,* 183 NLRB 682 (1970) (dues not withheld by employer ordered to be offset against backpay due employees – in effect deducting dues from pay).

such a change. Such warning would not be provided if *Bethlehem Steel* is retroactively overruled.

Overruling *Bethlehem Steel* will put in place a new rule of law; to impose such a rule retroactively will amount to a "manifest injustice." *See SNE Enters., Inc.,* 344 NLRB 673 (2005). Respondents clearly relied upon *Bethlehem Steel* and to overrule it retroactively would be manifestly unjust.[12]

Retroactive enforcement of a new rule would not significantly support accomplishment of the Act's purposes but would only financially aid the Union to the detriment of those employees who had not paid their union dues during the contract interregnum and from whose pay the retroactive dues would be deducted. Therefore, any overruling of *Bethlehem Steel* should only be prospective. *See Epilepsy Found. Of Northeast Ohio v. NLRB,* 268 F.3d 1095, 1102 (D.C. Cir. 2001) (in considering whether to give retroactive application to a new Board rule substituted for old law, the new rule may justifiably be given prospective – only effect in order to protect the settled expectations of those who had relied upon the preexisting rule).

[12] The Union will not suffer any loss if *Bethlehem Steel* is only prospectively overruled. It retains the right to satisfy dues deficiencies directly from the members who may owe dues payments.

CONCLUSION

The ALJ did not err in finding that under current Board law Respondents did not violate Section 8(a)(5) by discontinuing dues deductions after their contract terminated. That Board law should not be overruled. Further, if the Board should decide to overrule almost 50 years of precedent, it should only do so on a prospective basis.

Dated this 24th day of February 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing Answering Brief On Behalf Of Respondent Hargrove Electric Co., Inc., Respondent Alman Construction Services LP And Respondent Boggs Electric Co., Inc. To Charging Party IBEW Local 20's Exceptions To The Decision Of The Administrative Law Judge was e-filed with the NLRB and sent via e-mail to the following on this 24 day of February 2012:

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